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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,180	06/30/2005	Linda Veronneau	EAR-101 (US) (NAT)	6142
69995	7590	03/26/2008	EXAMINER	
ANTHONY L. MEOLA, ESQ. 66 INDIAN WELLS ROAD BREWSTER, NY 10509			KILIMAN, LESZEK B	
		ART UNIT	PAPER NUMBER	
		1794		
		MAIL DATE	DELIVERY MODE	
		03/26/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Supplemental
Office Action Summary**

Application No.	Applicant(s)	
10/541,180	VERONNEAU ET AL.	
Examiner	Art Unit	
Ieszek b. kiliman	1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 May 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4,7,10,13,14,19 and 20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4,7,10,13,14,19 and 20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>with application</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

This office action supplements the previous office action by examiner. The amendments submitted on May 16, 2007 by the new attorney of record have not been previously considered.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1,4,7,10,13,14,19,20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is

(a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

In the present instance, claim 1 recites the broad recitation of particulate units 1 micrometer to 3 cm, and the claim also recites nanoscale range for the same particulate units which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,4,7,10,13,14,19,20 are rejected under 35 U.S.C. 102(b) as being anticipated by Geiser'448.

See Geiser'448, Abstract, figures, Summary of the Invention, column 2, bottom – column 3, lines 1-35 and claims.

The amendments and remarks filed by Applicants in their response on May 16, 2007 have been fully considered. The claims, however, remain unpatentable in view of the above rejections.

Regarding the rejections based on 35 USC 112, applicants have argued that the amendments correct deficiencies of the original claims. The examiner, however, points out that he believes that claims are still not clear. It appears that applicants attempt to distinguish two types of dimensions in the claimed particulate units. One is " size" and the other is "dimension" ? Claims do not state what is a difference between them or describe what is the shape of particulate unit. In dependent claims applicants claim for example the thickness of the particulate unit as being of nanoscale. This is inconsistent with the claimed size of 1-3 micrometers.

In response to the Applicants arguments the examiner submits that the prior art cited substantially teaches the claimed invention as in the above rejections. The prior art particles have "multiple diameters" of the size within the claimed particle sizes. Also, the prior art particles have grooves of a specified dimensions that imposes edges and other shapes on particles of the sizes within the claimed sizes. The rejections are believe to be proper and are maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to leszek b. kiliman whose telephone number is 571-272-1509. The examiner can normally be reached on M-T, 6.30-5.00.

Art Unit: 1794

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LK
/leszek b kiliman/
Primary Examiner, Art Unit 1794

LESZEK KILIMAN, PhD
PRIMARY EXAMINER